

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-CV-00329-GKF-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**REPLY OF STATE OF OKLAHOMA IN SUPPORT OF ITS
OPPOSED MOTION FOR EXTENSION OF TIME TO COMPLY
WITH THE COURT’S ORDER OF FEBRUARY 26, 2007 (DKT NO. 1063)**

COMES NOW, the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter “the State”) and submits this Reply in support the “State’s Opposed Motion for Extension of Time to Comply with the Court’s Order of February 26, 2007 (Dkt. No. 1063)”:

In its Order of February 26, 2007 (Dkt. No. 1063) the Court noted that the indices used by the State to designate documents for Rule 33(d) did not sufficiently identify responsive documents and ordered, absent agreement between the parties, the State to refer to specific bates numbers. (Order at 7-8)

However, as demonstrated by the State in its Motion for Reconsideration through the affidavits of its document custodians, the State did not Bates number its original documents. The Tyson Defendants themselves are the authors of the Court’s misunderstanding to the contrary because, when the Court stated its concern about confusion about the boxes and the fact that “we may not be Bates-stamping,” they represented to the Court on February 15, 2007 that they were

not “aware of any confusion regarding the Bates-numbered documents” and that they had documents “Bates-numbered by agency, ODEQ.” Transcript of February 15, 2007 hearing at 138-39 (Ex. 1). This statement created the impression that all parties had a set of Bates-stamped documents. In order to correct the Court’s misapprehension of fact, the State has moved the Court to reconsider this aspect of February 26, 2007 Order.

The State has been conferring with the Defendants regarding this issue since February 28, 2007 and learned for the first time on March 21, 2007 that the Tyson Defendants would not accept designation of documents by category and location in all circumstances. In their Response (Dkt. No. 1090) the Tyson Defendants harden their position even more, and, for the first time, are requiring the designation of all documents by Bates numbers as one of their two conditions for agreeing to an extension of time for the State to respond to the Court’s Order. This condition would require the State to abandon at least that part of its Motion for Reconsideration (Dkt. No. 1074) which attempts to correct the Court’s misapprehension of fact about its ability to refer to Bates numbers on its original records, and thus is a condition unacceptable to the State, especially since, as evidenced by the attached transcript pages, the Tyson Defendants materially contributed to the Court’s misunderstanding. Given the importance of this issue, the State respectfully asks the Court to expedite consideration of its Motion for Reconsideration (Dkt. No. 1074).

The insinuation that the State rejected Tyson Defendants proposal to otherwise supplement its responses fully is beyond the pale. The State, of course, will fully supplement its responses and to do so the State needs additional time. However, Bates numbering the State’s original documents by the March 28, 2007 deadline is impracticable and in fact the State has

proposed an alternative method that is both specific enough for the Defendants to identify documents responsive to their request and is reasonable for the State.

The Tyson Defendants' other condition, that the State agree to an additional thirty days to respond to the State's expert reports, due February 1, 2008, has no bearing or connection to the extension the State requested. The Tyson Defendants offered no cogent reason why they needed that particular extension, and still do not. This condition is unacceptable as well.

The State respectfully requests the Court grant its request for extension of time and, as soon as possible, its Motion for Reconsideration.

Respectfully Submitted,

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